

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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KHALID WEST,

Petitioner,

-against-

**LEONARD A. PORTUONDO, Superintendent,
Shawangunk Correctional Facility**

Respondent.
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01 CV 8530 (NG) (SMG)

ORDER

GERSHON, United States District Judge:

Petitioner challenges an October 23, 1996 conviction for robbery and attempted murder. In a September 27, 2005 report and recommendation, Magistrate Judge Steven M. Gold recommends denial of the petition. This court has reviewed the report and recommendation and petitioner's objections to it. Those objections are without merit. Petitioner's heavy reliance on *United States v. Glenn*, 312 F.3d 58 (2d Cir. 2002), is misplaced, as the evidence against him was far different from that against defendant Glenn. Petitioner also ignores that, on review for sufficiency, the evidence and all reasonable inferences from it, must be taken in the light most favorable to the prosecution.

Judge Gold's excellent opinion addresses all of the issues presented by the petitioner. It is adopted as the Order of the Court. Accordingly, petitioner's application for a writ of habeas corpus is denied. Since petitioner has failed to make a substantial showing of the denial of a constitutional right, a certificate of appealability is denied pursuant to 28 U.S.C. § 2253(c). Moreover, the court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that *in forma pauperis* status is denied for the purpose

of an appeal. The Clerk of Court is directed to close this case.

SO ORDERED.

/S/

NINA GERSHON

United States District Judge

Dated: Brooklyn, New York
January 9, 2006